



PRELIMINARY DRAFT

No. 3101

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2013 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 33-39-7.

Synopsis: Prosecuting attorneys retirement fund. Changes various features of the prosecuting attorneys retirement fund to incorporate the same or similar features found in the 1985 judges' retirement system, including the retirement benefit, the disability benefit, limiting the participant contribution period to 22 years, allowing a participant to designate the participant's children to receive the participant's survivor benefit, and after June 30, 2014, providing for automatic increases to participants' retirement benefits based on increases in prosecutors' salaries.

Effective: July 1, 2013.



A BILL FOR AN ACT to amend the Indiana Code concerning pensions.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 33-39-7-7 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 7. As used in this
3 chapter, "salary" means the salary paid to a participant by the state **or**
4 **a county**, determined without regard to any salary reduction agreement
5 established under Section 125 of the Internal Revenue Code. ~~The term~~
6 ~~does not include an amount paid to a participant by a county or~~
7 ~~counties.~~

8 SECTION 2. IC 33-39-7-12, AS AMENDED BY P.L.13-2011,
9 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
10 JULY 1, 2013]: Sec. 12. (a) Except as **otherwise** provided in
11 ~~subsection (b)~~, **this section**, each participant shall make contributions
12 to the fund as follows:

13 (1) A participant described in section 8(a)(1) of this chapter shall
14 make contributions of six percent (6%) of each payment of salary
15 received for services after December 31, 1989.

16 (2) A participant described in section 8(a)(2) or 8(a)(3) of this
17 chapter shall make contributions of six percent (6%) of each
18 payment of salary received for services after June 30, 1994.

19 A participant's contributions shall be deducted from the participant's
20 monthly salary by the auditor of state and credited to the fund.

21 (b) The state may pay the contributions for a participant. **The state**
22 **may elect to pay the state's contribution as a pickup under Section**
23 **414(h) of the Internal Revenue Code.**

24 (c) **After a participant has contributed to the fund as provided**
25 **in subsection (a) for twenty-two (22) years, the participant is not**
26 **required to make additional contributions to the fund.**

27 ~~(c)~~ (d) After December 31, 2011, the auditor of state shall submit
28 the contributions paid by or on behalf of a participant under this section
29 by electronic funds transfer in accordance with section 12.5 of this
30 chapter.

31 SECTION 3. IC 33-39-7-15, AS AMENDED BY P.L.33-2006,



SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 15. A participant whose employment in a position described in section 8 of this chapter is terminated is entitled to a retirement benefit computed under section 16 or 18 of this chapter, beginning on the date specified by the participant in a written application, if all of the following conditions are met:

(1) The application for retirement benefits and the choice of the retirement date is filed on a form provided by the board, and the retirement date is:

(A) after the cessation of the participant's service;

(B) on the first day of a month; and

(C) not more than six (6) months before the date the application is received by the board.

However, if the board determines that a participant is incompetent to file for benefits and choose a retirement date, the retirement date may be any date that is the first of the month after the time the participant became incompetent.

(2) The participant:

(A) is at least sixty-two (62) years of age and has at least eight (8) years of service credit; ~~or~~

~~(B) meets the requirements for disability benefits under section 17 of this chapter.~~

(B) is at least fifty-five (55) years of age and the participant's age in years plus the participant's years of service is at least eighty-five (85); or

(C) has become permanently disabled.

(3) The participant is not receiving and is not entitled to receive any salary for services currently performed, except for services rendered as a senior prosecuting attorney under IC 33-39-1.

SECTION 4. IC 33-39-7-16, AS AMENDED BY P.L.16-2011, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 16. (a) ~~This section does not apply to~~ **Except as provided in subsections (c) and (d),** a participant who: ~~meets the requirements~~

(1) applies for disability benefits under section 17 of this chapter: a retirement benefit; and

(2) is:

(A) at least sixty-five (65) years of age; or

(B) at least fifty-five (55) years of age and the participant's age in years plus the participant's years of service is at least eighty-five (85);

is entitled to an annual retirement benefit as calculated in subsection (b).

(b) Except as provided in subsections (c) and (d), the amount of the annual retirement benefit ~~to which of a participant who applies for a retirement benefit and who is at least sixty-five (65) years of age is~~



entitled described in subsection (a) equals the product of:

- (1) the highest annual salary that was paid to the participant before separation from service; multiplied by
- (2) the percentage prescribed in the following table:

Participant's Years of Service	Percentage
Less than 8	0
8	24%
9	27%
10	30%
11	33%
12	50%
13	51%
14	52%
15	53%
16	54%
17	55%
18	56%
19	57%
20	58%
21	59%
22 or more	60%

If a participant has a partial year of service in addition to at least eight (8) full years of service, an additional percentage is calculated by prorating between the applicable percentages, based on the number of months in the partial year of service.

(c) If a participant who applies for a retirement benefit is not at least sixty-five (65) years of age, the participant is entitled to receive a reduced annual retirement benefit that equals the benefit that would be payable if the participant were sixty-five (65) years of age reduced by ~~one-fourth one-tenth~~ percent (~~0.25%~~) **(0.1%)** for each month that the participant's age at retirement precedes the participant's sixty-fifth birthday. **This reduction does not apply to:**

- (1) participants who are separated from service because of permanent disability;**
- (2) survivors of participants who die while in service after August 1, 1992; or**
- (3) survivors of participants who die while not in service but while entitled to a future benefit.**

(d) Benefits payable to a participant under this section are reduced by the pension, if any, that would be payable to the participant from the public employees' retirement fund if the participant had retired from the public employees' retirement fund on the date of the participant's retirement from the prosecuting attorneys retirement fund. Benefits payable to a participant under this section are not reduced by annuity payments made to the participant from the public employees' retirement



fund.

(e) If benefits payable from the public employees' retirement fund exceed the benefits payable from the prosecuting attorneys retirement fund, the participant is entitled at retirement to withdraw from the prosecuting attorneys retirement fund the total sum contributed plus interest at a rate specified by rule by the board.

SECTION 5. IC 33-39-7-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 17. (a) Except as provided in subsection (b), a participant who becomes disabled while in active service in a position described in section 8 of this chapter may retire for the duration of the disability if:

- (1) the participant has at least five (5) years of creditable service;
- (2) the participant has qualified for Social Security disability benefits and has furnished proof of the Social Security qualification to the board; and
- (3) at least once each year until the participant becomes sixty-five (65) years of age a representative of the board verifies the continued disability.

For purposes of this section, a participant who has qualified for disability benefits under the federal civil service system is considered to have met the requirement of subdivision (2) if the participant furnishes proof of the qualification to the board.

(b) Benefits may not be provided under this chapter for any disability that:

- (1) results from an intentionally self-inflicted injury or attempted suicide while sane or insane;
- (2) results from the participant's commission or attempted commission of a felony; or
- (3) begins within two (2) years after a participant's entry or reentry into active service in a position described in section 8 of this chapter and was caused or contributed to by a mental or physical condition that manifested itself before the participant entered or reentered active service.

(a) A participant is considered to have a permanent disability if the board has received written certifications by at least two (2) licensed and practicing physicians, appointed by the board, that:

- (1) the participant is totally incapacitated, by reason of physical or mental infirmities, from earning a livelihood; and
- (2) the condition is likely to be permanent.

(b) A participant found to have a permanent disability under subsection (a) must be reexamined by at least two (2) physicians appointed by the board, at the times the board designates but at intervals not to exceed one (1) year. If, in the opinion of these physicians, the participant has recovered from the participant's disability, benefits cease to be payable as of the date of the examination, unless on that date the participant is:



- (1) at least sixty-five (65) years of age; or
 (2) at least fifty-five (55) years of age and the participant's age in years plus the participant's years of service is at least eighty-five (85).

(c) To the extent required by the Americans with Disabilities Act, the transcripts, reports, records, and other material generated to prove that an individual is qualified for disability benefits under this section shall must be:

- (1) kept in separate medical files for each member; and
 (2) treated as confidential medical records.

SECTION 6. IC 33-39-7-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 18. (a) Except as provided in subsection (b), the amount of the annual benefit payable to a participant who meets the requirements for disability benefits under section 17 of this chapter becomes permanently disabled, as described in section 17 of this chapter, is entitled to an annual benefit equal to the product of:

- (1) the annual salary that was paid to the participant at the time of separation from service; multiplied by
 (2) the percentage prescribed in the following table:

Participant's Years of Service	Percentage
Less than 5	0
5-10 0-12	40% 50%
11 13	41% 51%
12 14	42% 52%
13 15	43% 53%
14 16	44% 54%
15 17	45% 55%
16 18	46% 56%
17 19	47% 57%
18 20	48% 58%
19 21	49% 59%
20 22 or more	50% 60%

If a participant has a partial year of service in addition to at least twelve (12) years of service, an additional percentage is calculated by prorating between the applicable percentages, based on the number of months in the partial year of service.

(b) Benefits payable to a participant under this section are reduced by the amounts, if any, that are payable to the participant from the public employees' retirement fund.

SECTION 7. IC 33-39-7-19, AS AMENDED BY P.L.33-2006, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 19. (a) A participant may designate the participant's surviving spouse or one (1) or more of the participant's surviving dependent children to receive the benefit



provided by this section upon the death of the participant. A participant may designate a trust or a custodian account under IC 30-2-8.5 established for one (1) or more of the participant's surviving dependent children to receive the benefit provided by this section instead of designating one (1) or more of the participant's surviving dependent children to receive the benefit directly.

(b) The surviving spouse of If a participant: who:

(1) dies; and

(2) on the date of death:

(A) was receiving benefits under this chapter;

(B) had completed at least eight (8) years of service in a position described in section 8 of this chapter; or

(C) ~~met the requirements for~~ **had a permanent** disability benefits ~~under as described in~~ section 17 of this chapter; or

(D) was not in service in a position described in section 8 of this chapter, had completed at least eight (8) years of service in a position described in section 8 of this chapter, and was entitled to a future benefit;

the participant's beneficiary designated under subsection (a) is entitled, regardless of the participant's age, to the benefit prescribed by subsection (b): (c).

(b) (c) The surviving spouse amount of the annual benefit payable to a beneficiary to whom subsection (b) applies is entitled to a benefit for life equal to the greater of:

(1) ~~seven twelve~~ thousand dollars ~~(\$7,000);~~ **(\$12,000);** or

(2) fifty percent (50%) of the amount of retirement benefit the participant was drawing at the time of death, or to which the participant would have been entitled had the participant retired and begun receiving retirement benefits on the date of death, with reductions as necessary under section 16(c) of this chapter.

(d) A benefit payable under this section is subject to the following:

(1) A surviving spouse designated as the beneficiary under subsection (a) is entitled to receive the benefit for life.

(2) The total monthly benefit payable to a surviving child or children is equal to the same monthly benefit that was to have been payable to the surviving spouse.

(3) If there is more than one (1) child designated by the participant, then the children are entitled to share the benefit in equal monthly amounts.

(4) A child entitled to a benefit shall receive that child's share until the child becomes eighteen (18) years of age or during the entire period of the child's physical or mental disability, whichever period is longer.

(5) Upon the cessation of benefits to one (1) designated child, if



there are one (1) or more other children then surviving and still entitled to benefits, the remaining children shall share the benefit equally. If the surviving spouse of the participant is surviving upon the cessation of benefits to all designated children, the surviving spouse shall then receive the benefit for the remainder of the spouse's life.

(6) The benefit shall be payable to the participant's surviving spouse if any of the following occur:

(A) No child or children named as a beneficiary by the participant survive the participant.

(B) No child or children designated by the participant is or are entitled to a benefit due to the age of the child or children at the time of death of the participant.

(C) A designation is not made.

(e) Benefits payable to a surviving spouse designated beneficiary under this section are reduced by the amounts, if any, that are payable to the surviving spouse or the surviving dependent children from the public employees' retirement fund as a result of the participant's death.

SECTION 8. IC 33-39-7-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 20. (a) If:

(1) a participant's spouse does not survive the participant; and

(2) the participant did not designate one (1) or more of the participant's surviving dependent child of a participant is; children to receive the benefit provided by section 19 of this chapter;

the participant's surviving dependent children are, upon the death of the participant, entitled to a benefit equal to the benefit the participant's spouse would have received under section 19 of this chapter.

(b) If a surviving spouse of a decedent participant dies and a dependent child of the surviving spouse and the decedent participant survives them, that dependent child is entitled to receive a benefit equal to the benefit the spouse was receiving or would have received under section 19 of this chapter.

(c) If there is more than one (1) dependent child, the dependent children are entitled to share the benefit equally.

(d) Each dependent child is entitled to receive that child's share until the child becomes eighteen (18) years of age or during the entire period of the child's physical or mental disability, whichever period is longer.

(e) Benefits payable to a dependent child are reduced by the amounts, if any, that are payable to the dependent child from the public employees' retirement fund.

SECTION 9. IC 33-39-7-21, AS AMENDED BY P.L.16-2011, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 21. (a) If benefits are not payable to the survivors



of a participant who dies, and if a withdrawal application is filed with the board by the survivors or the participant's estate, the total of the participant's contributions, plus interest at a rate specified by rule by the board and minus any payments made to the participant, shall be paid to:

(1) the surviving spouse of the participant **or the children of the participant, as designated by the participant;**

(2) any ~~dependent~~ or dependents of the participant, if a spouse **or designated child** does not survive; or

(3) the participant's estate, if a spouse, **designated child, or other** dependent does not survive.

(b) The amount owed a spouse, ~~dependent~~ **or designated children, other** dependents, or estate under subsection (a) is payable not later than sixty (60) days after the date of receipt of the withdrawal application **or in monthly installments as the recipient elects.**

SECTION 10. IC 33-39-7-26 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 26. (a) This section applies only to state fiscal years beginning after June 30, 2014.**

(b) This section applies only to a participant:

(1) who applies to receive retirement benefits from the fund before January 1, 2014; or

(2) who:

(A) before January 1, 2014, separates from service;

(B) is entitled to receive a retirement benefit from the fund but does not apply to receive the retirement benefit before January 1, 2014; and

(C) does not earn any service credit in the fund after December 31, 2013.

(c) If a salary increase is provided in a state fiscal year under IC 33-39-6 or any other law for individuals in a position described in section 8 of this chapter, the monthly benefits payable to a participant to whom this section applies must be increased by the same percentage by which the salary for the highest paid position described in section 8 of this chapter held by the participant during the participant's term of service is increased for the state fiscal year. The percentage increase is applied to the monthly benefit received by the participant as of June 30 of the immediately preceding state fiscal year. The percentage increase to the monthly benefit is effective when the salary increase is effective.

(d) An increase payable under this section may not include any amount based on the percentage by which any salary provided by a county is increased.

